

M E M O R A N D U M

TO: Governing Board Members

FROM: Kenneth G. Ammon, P.E., Deputy Executive Director,
Everglades Restoration Resource Area

DATE: August 3, 2009

SUBJECT: Pre-Partnership Credit Agreement for the Biscayne Bay Coastal Wetlands
Restoration Project – Contract Number 4600001859

Background: Staff requests Governing Board approval to enter into a Pre-Partnership Credit Agreement with the U.S. Army Corps of Engineers (USACE), at no cost to the SFWMD, to establish eligibility to receive credit for the costs of performing construction-related work on the Biscayne Bay Coastal Wetlands Restoration Project toward the SFWMD's 50 percent share of the costs for the Comprehensive Everglades Restoration Plan (CERP). The work proposed to be completed under this Pre-Partnership Credit Agreement will include: 1) preparation of lands for project purposes including removal of vegetation (including citrus trees) demolition of buildings and structures, removal of trash, removal of septic tanks, removal of above ground storage tanks, capping of wells; 2) investigations to identify the existence and extent of hazardous substances and clean-up of hazardous materials associated with historic application of fertilizers or pesticides for restoration purposes; 3) construction of certain features including the Deering Estate Flow-way project, the Cutler Wetlands C-1 Flow-way project, and the L-31E Culverts project, 4) monitoring including installation, maintenance and data processing to measure project benefits' and 5) investigations to determine the presence of cultural or historical resources.

The proposed work will be conducted as generally described in the Central and South Florida Comprehensive Review Study and Final Integrated Programmatic Environmental Impact Statement, paragraph 9.1.8.23 dated April 1999.

In Section 6004 of the Water Resources Development Act of 2007, Congress authorized the Assistant Secretary of the Army to provide credit for construction costs incurred by the SFWMD prior to signing a Project Partnership Agreement, if the construction is carried out in accordance with the terms and conditions of an agreement between the SFWMD and the Assistant Secretary of the Army. The USACE's implementation guidance for Section 6004 specifies that in order to maintain eligibility for credit, the SFWMD must execute a Pre-Partnership Credit Agreement with the Assistant Secretary of the Army prior to awarding the construction contract. The SFWMD and the USACE have developed a Pre-Partnership Credit Agreement covering SFWMD's proposed work on the Biscayne Bay Coastal Wetlands Restoration Project and the USACE-Jacksonville District Engineer has been approved to sign this agreement.

This Pre-Partnership Credit Agreement does not provide credit, nor does it guarantee that credit will be provided at any time in the future. It merely establishes eligibility for future credit if the following occur:

1. The Assistant Secretary of the Army (Civil Works) makes a written determination that the Proposed Work is integral to the authorized project:
2. Congress authorizes construction of the Biscayne Bay Coastal Wetlands Restoration Project; and
3. The USACE determines that the SFWMD's Proposed Work costs are necessary, reasonable, allowable, allocable and auditable.

How this helps meet the District's 10-Year Strategic Plan: This agreement will establish eligibility for future credit toward the SFWMD's 50 percent cost-share on CERP, which is a major component of the Strategic Plan. If credited for this expenditure, it would reduce the SFWMD's future required contribution for the remainder of CERP.

Funding Source: No funding is needed for this action.

This Board item impacts what areas of the District, both resource areas and geography: Because this action influences credit toward the 50/50 cost-share for CERP, it has potential impact on the entire SFWMD. Staff from the Everglades Restoration Resource Area will manage the contract.

What concerns could this Board item raise? By approving this Pre-Partnership Credit Agreement, the Governing Board will be agreeing that the SFWMD will not receive credit for the following out-of-pocket costs associated with real estate and construction for the Biscayne Bay Coastal Wetlands Restoration Project: 1) the State's costs for management and maintenance of the lands prior to signing a Project Partnership Agreement; and 2) the SFWMD's costs of remediating soils contaminated with hazardous agricultural chemicals, costs unless otherwise provided for in the Project Partnership Agreement. Similar to previous cost-share agreements between the USACE and the SFWMD, the USACE has determined that providing credit for these costs is inconsistent with its statutory authority and/or its nationwide policy.

Why should the Governing Board approve this item? If SFWMD does not sign this Agreement, it will not be eligible to receive credit for the costs of performing the proposed work.

Attachment – Resolution
KGA/pw